(4)

Office - Supreme Court, U.S.
FILED
MAR 24 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

On Petition for Writ of Certiorari To The
United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

BEST AVAILABLE COPY

13 pp

PARTIES BELOW

The petition for writ of certiorari inadvertently omitted to identify the following parties below:

> St. Louis Teachers Union Local 435, American Federation of Teachers;
>
> North St. Louis Parents and Citizens for Quality Education, an unincorporated association, including William Upchurch, Vivian Ali, and Dorothy Robins, parents of children attending the St. Louis city public schools and members of the regional plaintiff classes who objected to the settlement agreement.

TABLE OF CONTENTS

	Page
Parties Below	i
Table of Contents	iii
Opinions Below	2
Statement of the Case	2

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

On Petition for Writ of Certiorari To The
United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

Pursuant to Supreme Court Rule 22.6, petitioners submit this supplemental brief concerning developments below since the filing of the petition.

OPINIONS BELOW

On March 5, 1984, the United States Court of Appeals for the Eighth Circuit recalled and modified its mandate in the cases before it, Nos. 83-1957, 2033, 2118, 2140, 2220 and 2554, *Craton Liddell, et al. v. State of Missouri, et al.* The orders entered on March 6 are reprinted in the appendix to this supplemental brief.

STATEMENT OF THE CASE

The interdistrict settlement agreement, appendix C to petition for writ of certiorari, which generated the judgments below in this case, called for the State of Missouri to finance transfers of students among school districts located in St. Louis County, Missouri. None of the districts involved had been implicated in the intradistrict constitutional violation committed by the State in the City of St. Louis school district. In its en banc opinion filed February 8, 1984, the Court of Appeals held that these "county-to-county" transfers constituted an impermissible interdistrict remedy. See Appendix K to petition, pp. A-428-A-429.

On March 5, 1984, the Court of Appeals disposed of various motions and a petition for rehearing in this case. The Court modified its prior opinion and mandate to require the State of Missouri to continue to fund certain transportation and other costs of "county-to-county" interdistrict transfers in the St. Louis metropolitan area for the remainder of the 1983-84 academic year. Supp. App. A-3. The Court also held that the district court could, at the end of the school year, apportion the "county-to-county" transfer costs incurred by the State after February 21, 1984, among the signatories to the settlement *and* the State "in such proportions as it deems fair and equitable." Supp. App. A-4. Four judges dissented from the holding insofar as it required the State to share the cost.

The order amending the mandate of the Court of Appeals does not appear to affect the questions presented by the instant petition for writ of certiorari.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Mo. 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Mo. 63103
(314) 622-3361

Attorneys for Petitioners

*Counsel of Record

March, 1984

APPENDIX

SUPPLEMENTAL APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1983

No. 83-1957, 2033, 2118,
2140, 2220 & 2554

Craton Liddell, et al.,
Appellees,

v.

State of Missouri, et al.,
Appellants.

Appeal from the United States
District Court for the
Eastern District of Missouri

ORDER

On the Court's own motion the mandate of this Court issued on February 8, 1984 is hereby recalled and the Clerk of this Court is directed to issue a new mandate in conformity with the order of March 5, 1984.

March 5, 1984.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 83-1957, 83-2033, 83-2118,
83-2140, 83-2220, 83-2554

Craton Liddell, et al,
Appellees,

v.

State of Missouri, et al,
Appellants.

On Motion to Clarify Opinion
and to Dissolve Stay.

Filed: March 5, 1984

Before LAY, Chief Judge; HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG, and BOWMAN, Circuit Judges, *En banc.*

ORDER

On February 8, 1984, this Court filed its opinion in the St. Louis school desegregation cases. We directed that our mandate be issued forthwith. Thereafter, the State of Missouri notified the St. Louis County schools that it would discontinue payments for transporting students between county schools on

February 17, 1984. It sent a similar notice to the parents of children participating in such transfers. Subsequently, the county schools and the Caldwell plaintiffs moved this Court for an order directing the State to continue to pay for transporting the county-to-county transfer students for the balance of the 1983-84 school year. At oral argument, it became clear that fiscal incentives for sending and receiving school districts were intended to be included within the purview of the parties' motions.

We consider the motions filed as motions to recall our mandate and to clarify or modify our opinion in the interests of justice. *See Dilley v. Alexander,* 627 F.2d 407, 410-411 (D.C. Cir. 1980); *Reserve Mining Co. v. Lord,* 529 F.2d 181, 183 (8th Cir. 1976); *Reserve Life Ins. Co. v. Pitfield MacKay & Co.,* 528 F.2d 120, 123 (8th Cir. 1976); *Greater Boston Television Corp. v. FCC,* 463 F.2d 268, 275-279 (D.C. Cir. 1971), *cert. denied,* 406 U.S. 950 (1972).

In our view, it would be inequitable to disrupt the education of the 311 students affected. It has been the consistent view of this Court in school desegregation cases that we will avoid disruption during the school year whenever possible. *See, e.g., Liddell v. Missouri,* 717 F.2d 1180, 1182-1183 (8th Cir. 1983) (en banc) (*Liddell VI); Liddell v. Bd. of Educ.,* 667 F.2d 643, 654 (8th Cir. 1981) (*Liddell III), cert. denied,* 454 U.S. 1081, 1091 (1982). *Cf. Lemon v. Kurtzman,* 411 U.S. 192, 194, 199-200 (1973); *Missouri ex rel. Freeman v. Block,* 690 F.2d 139, 144-145 (8th Cir. 1982) (equitable considerations important in remedial context).

We thus order the State to continue to fund county-to-county transfers for the balance of the current school year, including payments for transportation and fiscal incentives to sending and receiving school districts. At the end of the current school year, the State and the county school districts shall attempt in good faith to allocate the costs incurred by the State from February 21, 1984, to the end of the school year between the State and all

county school districts that are signatories to the settlement agreement. If they fail, the district court shall, after an appropriate hearing, allocate the costs between the county school districts which signed the settlement agreement and the State in such proportions as it deems fair and equitable. If any party objects to this allocation, it may take an expedited appeal to this Court. We note that in determining the costs of transporting county students, only those costs that would not otherwise have been incurred by the State pursuant to this Court's opinion should be included.

We have before us a motion to dissolve a temporary stay issued by Judge Theodore McMillian for lack of jurisdiction. This issue has been mooted by the present order.

We also have before us a request by the Kirkwood school district for clarification of our opinion. In response to that request, we note that the State is oligated to pay fiscal incentives to a county school district which establishes a magnet school and receives black students from the City school district. Such State payments shall not, however, exceed the amount the county school district would receive if these transfer students were enrolled in the county's regular school. We direct that future requests for clarification of this Court's opinion should be taken initially to the district court.

The mandate previously issued is reconsidered and amended as indicated by this order. As amended, the mandate of this Court shall issue forthwith. To the extent not granted by this order, the petition for rehearing filed by the Parkway school district is denied.

Concurring and dissenting opinion of HEANEY, ROSS, JOHN R. GIBSON and BOWMAN, Circuit Judges.

We agree that the 311 county students who are now attending a district other than their own school should be permitted to complete the school year in the school they currently attend,

and that the State should initially be required to cover these costs.

We also agree that at the end of the school year, the cost of permitting these students to finish the school year should be allocated by the district court. We would, however, require that court to allocate the cost among the county school districts that are signatories to the settlement agreement. We would not require the State to bear any costs of these transfers other than those incurred prior to February 21, 1984.

A true copy.

Attest: /s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.